



United States
Department of
Agriculture

Food and
Nutrition
Service

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November 15, 2007

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SUBJECT: Facility Applications and Agreements
in the Child and Adult Care Food Program (CACFP)

TO: Regional Directors
Special Nutrition Programs
All Regions

State Agency Directors Administering CACFP
All States

In response to a recommendation of the CACFP Paperwork Reduction Work Group, we are issuing this memorandum to re-state previous guidance on facility applications and agreements. It was the sense of the Work Group that, in some cases, State agencies are still requiring facilities and institutions to submit information much more frequently than is necessary or required. This memorandum summarizes the requirements relating to **facility** applications and agreements, and describes the flexibilities available to State agencies in implementing these requirements. Issues related to institution applications and agreements have been addressed in training on the second interim rule, but we also plan to update and reissue that guidance in the near future.

In General: Facility Applications and Agreements in the CACFP

We find that there is some confusion about facility applications and agreements, in part because some think of the application and agreement as a single Program document, as opposed to two distinct documents. Although both an approved application and an agreement are necessary for any family day care home (FDCH) to participate, this memorandum treats the application and agreement separately, to try to avoid such confusion, and to emphasize the distinct purpose of each document.

Applications

Any facility (whether a FDCH or a sponsored center) wishing to participate in the CACFP must first apply to participate. A Program application is designed to capture the information needed by a State agency to determine whether an individual facility is both eligible and capable of participation.

Agreements

Any FDCH wishing to participate in the CACFP must sign an agreement. An agreement is the legal contract that permits the FDCH to participate in CACFP, subject

to Program requirements. No facility other than a FDCH is required by regulation to enter into an agreement with a sponsoring organization. However, in many cases, sponsors of facilities other than homes will require the facility to enter into an agreement with the sponsor, so that each party's rights and responsibilities are clearly established.

Once a State agency has approved a facility's application, a sponsoring organization can enter into an agreement with that facility, and the facility can be reimbursed for eligible meals served (NOTE: the conditions under which a facility may receive reimbursement for meals served prior to the State agency's approval of its application are detailed in a memorandum issued on May 14, 2001, which is attached to this memorandum). For FDCHs and for many sponsored centers, entering into an agreement is the last step of the approval process. The agreement often incorporates the approved application "by reference", so that the information presented in the application becomes part of the legal agreement between the sponsoring organization and the facility.

Facility Applications

Content of Initial Application to Participate

A facility does not, of course, submit an application directly to the State agency. Instead, it submits its application to participate to a sponsoring organization, which then submits to the State agency "information concerning the eligibility status of child care and adult day care facilities (such as licensing/approval actions)" [See § 226.16(b), introductory paragraph, and § 226.16(b)(3)].

The regulations do not dictate the specific content of the application submitted by the facility to a sponsoring organization, except for the following:

- (for all facilities) documentation of the facility's current licensure or approval [see § 226.2 definitions of adult day care center, child care center, for-profit center, and day care home, § 226.6(d), and § 226.16(b)(3)];
- (for FDCHs) the provider's name, mailing address and date of birth [See § 226.16(b)(8)]; and
- (for adult day care centers, emergency shelters, at-risk snack programs, and outside-school-hours care centers) other information pertaining to the nature of services provided, or to the facility's compliance with applicable health or safety standards or other eligibility criteria (e.g., the area eligibility of an afterschool at-risk snack program, or the nature of services provided at an afterschool at-risk site or an adult day care center).

However, sponsoring organizations will need to capture additional information (e.g., days and hours of care, meals to be served and claimed, etc.), either on a facility's application or by other means approved by the State agency, so that the sponsor can properly perform its monitoring, claims processing, and other regulatory responsibilities. During the application process, the sponsoring organization may also gather additional information relevant to the facility's eligibility during the required pre-approval visit to the facility.

The regulations at § 226.16(b)(2) require a sponsoring organization to submit an application to the State agency for each facility it wishes to sponsor, and sponsors often do this by passing a copy of the facility's entire application to the State agency. However, if they wish, State agencies may also require sponsoring organizations to submit other information, along with the facility application, that will enable the State agency to make a determination of the facility's eligibility. The State agency could also elect to require that documentation—for example, that a FDCH is located in a residential-type facility, or that an at-risk program provides the requisite educational or enrichment activities—be captured on the application.

Frequency of Facility Applications (Renewal Applications)

Since Public Law 108-265 (the Child Nutrition and WIC Reauthorization Act of 2004) amended the National School Lunch Act (NSLA) to require permanent agreements between FDCHs and sponsoring organizations, there has been increased confusion regarding the frequency of facilities' renewal applications. However, the statutory provision requiring permanent agreements with FDCHs did not affect the facility application process, either for FDCHs or for any other type of facility.

Some State agencies continue to require both institutions and facilities to annually submit complete application renewals (that is, applications which include all of the information required for a first-time applicant to be approved). However, since 1989, when the NSLA was amended to permit State agencies to take applications from institutions on a multi-year basis (provided that all institution and facility licensure was annually confirmed), there has been no compelling reason for State agencies to require a sponsor to resubmit complete renewal applications for each facility each year. In many States, the current status of facility licensure is obtained directly from a State licensing agency, meaning that the State agency does not need to receive that information from the facility (via the sponsor) on a renewal application form. To reiterate, the primary purpose of the facility's initial application is to gather the information necessary for the sponsor and State agency to determine the facility's eligibility and capability. Once that information has been collected in the initial application, or through other means, much of it should not have to be re-submitted on another application unless it changes.

Sponsors, on the other hand, must receive some types of information from their facilities immediately when a change occurs (e.g., changes to the facility's licensing or approval, hours of operation, time of meal service, type of meal service, etc.), so that they can perform their management responsibilities to monitor, and process claims submitted by, facilities. However, it is not necessary to require a facility to submit a complete renewal application, whether annually or on some other cycle, to capture this changed information. In fact, the sponsor's immediate need for the information argues against requiring the resubmission of an application; instead, the State agency or sponsor may require facilities to inform the sponsor of the change as soon as it occurs, and may also require the sponsor to inform the SA of changes, as appropriate.

This gives State agencies considerable latitude in determining how frequently, if at all, a complete renewal application must be submitted by each facility to its sponsor, or whether the facility may simply update any information that has changed since its last application. In addition, the State agency has considerable latitude in determining how much of this revised facility information, if any, must be forwarded by the sponsor to the State agency. For example, a State agency could permit the updating of the renewal of all or part of the application on an exception basis, (i.e., the State agency could limit facilities' annual "renewal" to the submission of any information relating to changes in the facility's meal service). Conversely, the state could require that information about certain types of changes in the facility's meal service be forwarded by the sponsor to the State agency as soon as the sponsor is informed of the change.

Content and Duration of Facility Agreements

The statutory requirements pertaining to facilities' agreements with their sponsors are quite limited. The NSLA authorizes USDA to require State agencies to develop a standardized facility agreement for use by sponsors of FDCH. As stated above, the law also requires sponsors to enter into permanent agreements with FDCHs. The law is silent with regard to the agreements between sponsored centers and their sponsoring organizations.

USDA has implemented these statutory requirements at § 226.18(b) of the regulations. That section requires State agencies to develop a standard agreement between sponsors and FDCH, or to approve any FDCH agreement developed by a sponsor. The regulations further require that the agreement between sponsors and FDCHs be permanent, and that the agreement include a number of specific rights and responsibilities of each party to the agreement. There are no regulatory requirements pertaining to the content or duration of agreements between facilities and sponsors for any type of facility except FDCHs. Again, this provides State agencies with considerable latitude for determining the content and duration of agreements between facilities (other than FDCHs) and sponsors.

Summary

In summary, facility applications and agreements serve different (albeit complementary) purposes. The initial application to participate submitted by a facility must include enough information for the sponsor and State agency to determine the facility's eligibility and capability. In addition, other information needed by the sponsor to perform critical management functions, such as monitoring and accurate claims payment, must also be submitted, either on the initial application or on some other document submitted at that time. The agreement is a legal document, signed at the end of the application process, which typically incorporates the facility's application "by reference" and which provides the legal basis for reimbursement of eligible meals served by the facility.

The regulations set forth few specific requirements regarding the information to be included in a facility's application, largely allowing State agencies to determine the content. Nor are the frequency and content of facilities' renewal applications addressed in the regulations; they are left to the State agency's discretion. Whatever facility application process the State agency establishes, it must provide the sponsor and the State agency with current information necessary to determine the facility's eligibility, and may also serve as the vehicle for providing the sponsor with the other information necessary to perform critical management functions such as monitoring. While it is necessary for the sponsor to have immediate access to information about some changes to the information submitted on a facility's application, the regulations do not require that information to be captured through the use of a renewal application.

The law requires agreements between FDCHs and sponsors to be permanent, but is silent concerning Program agreements for other types of facilities. The law provides USDA with the authority to require State agencies to develop standard facility agreements, or to approve any other facility agreements developed by sponsors. USDA has implemented these requirements in the Program regulations.

State agencies should direct any questions concerning this memorandum to their FNS, Regional Office.



STANLEY C. GARNETT
Director
Child Nutrition Division

Attachment



Attachment

United States
Department of
Agriculture

MAY 14, 2001

Food and
Nutrition
Service

SUBJECT: Regional Directors
Special Nutrition Programs
All Regions

3101 Park
Center Drive
Alexandria, VA
22302-1500

TO: State Agency Approval of Sponsored Facilities' Applications and
Reimbursement to Facilities at the Time of their Initial Approval in the
Child and Adult Care Food Program (CACFP)

The purpose of this memorandum is to answer questions regarding the requirement at section 226.16(b) that State agencies approve sponsored facilities' applications for participation in CACFP, and the timing of the initial reimbursements to sponsored facilities in CACFP. This guidance applies to all types of sponsored child and adult care facilities—group or family day care homes, child care centers, adult day care centers, emergency shelters, and at-risk afterschool care centers.

I. State Agency Approval of Sponsored Facilities' Applications

What do the regulations require with regard to State agency approval of sponsored facilities' applications?

Section 226.16(b) requires each sponsoring organization to “submit to the State agency all information required for its approval and the approval of child care and adult day care facilities under its jurisdiction, including. . .(2) An application for participation, or renewal materials, for each child care and adult day care facility accompanied by all necessary supporting documentation...” This language requires State agencies to have in place a system for approving the Program participation of each sponsored facility, and for notifying sponsoring organizations in writing of their decision. The responsibility to approve the participation of facilities cannot be “delegated” to sponsoring organizations.

What is involved in a State agency's approval of a facility's application to participate?

The State agency's process for approving facility applications does not have to be elaborate. At a minimum it must ensure that:

- Each facility is currently licensed or otherwise approved to provide child care;
- No facility applying for approval is currently on the State agency's list of providers disqualified from participation in CACFP; and
- No facility is participating under more than one sponsorship.

Must the sponsoring organization submit a hard copy of its sponsor-facility agreement to the State agency for approval?

Not necessarily, although this may be the way the State agency chooses to implement this requirement.

II. Reimbursement to Facilities at the Time of their Initial Approval

Can a sponsored facility be reimbursed for meals served prior to the day on which the State agency approves the facility for Program participation?

Section 226.16(b) makes clear that a sponsored facility cannot receive reimbursement prior to the approval of its Program application by the State agency. However, for independent and sponsored centers, section 226.11(a) provides State agencies with the option of reimbursing for eligible meals served in the month before the month in which the agreement is executed. (For sponsored centers, this would be the month before the month that the State agency approves the center's application.) Thus, if the State agency permits, a center can earn reimbursement for meals served prior to the date its application is approved by the State agency, and receive such reimbursement retroactively after that approval.

The regulations are silent on the issue of when day care homes may begin to earn reimbursement for meals that meet the Program's meal pattern requirements. This memorandum extends the provision set forth in the regulations for centers to new family day care homes entering the Program under a participating day care home sponsor. Thus, the State agency also may elect to provide reimbursement for all eligible meals served in day care homes in the month prior to the month in which the State agency approves the home's application (provided the conditions discussed below are met).

Doesn't FNS Instruction 788-10, "Retroactivity of Agreements in the Child Care Food Program," prohibit retroactive payments to day care homes?

FNS Instruction 788-10 prohibits retroactive administrative and meal reimbursements to new sponsoring organizations of day care homes and their providers, but allows retroactive administrative and meal reimbursements to reapplying home sponsors and their providers. This memorandum addresses the situation in which a sponsoring organization already participating in the Program submits a day care home's application for participation to the State agency for approval.

What options do State agencies have with regard to reimbursements to new day care homes entering CACFP under an established sponsoring organization?

There are two acceptable approaches to the issue of when a day care home entering CACFP under an established sponsoring organization may begin to earn reimbursement for eligible meals.

First approach: State agency prohibits retroactive reimbursement—

For a variety of reasons, State agencies may believe that it is necessary to limit day care homes' ability to receive reimbursement for eligible meals served prior to the date of the State agency's approval of the home. State agencies employing this approach must ensure that all sponsoring organizations are aware of this policy, and that the sponsor communicates this policy to its providers at the time that the sponsor and home enter into an agreement.

Second approach: State agency allows retroactive reimbursement—

As discussed above, State agencies may permit day care homes to earn reimbursement for eligible meals served prior to the date of the State agency's approval of the home's application. This is acceptable provided that certain conditions are met. Since retroactive reimbursement is contingent upon State agency approval of the home, we strongly recommend that sponsoring organizations include a statement in their agreements with day care homes that retroactive reimbursement will only be provided if the State agency approves the home. Specifically, a day care home is not eligible for retroactive reimbursement for meals served unless all of the following have occurred:

- (1) The day care home and sponsor execute a Program agreement;
- (2) The day care home's licensure or alternate approval is effective;
- (3) The sponsor has conducted a pre-approval (pre-agreement) facility visit and facility training; and
- (4) The home has adequate documentation of the number of meals served and that the meals served met Program requirements.

For example, using this approach, a sponsoring organization signs a CACFP agreement with four new family day home providers on October 15. In early November, the sponsor submits to the State agency a list of all new providers added during the month of October, and materials documenting the date of each facility's agreement, licensure, and pre-approval visit, plus whatever other materials the State agency requires in order to render its decision on facility approval. After the State agency approves each new provider's participation on November 20, the sponsor could submit an amended October claim that

included the eligible meals served by each provider on or after October 1 (i.e., the first day of the month before the month the State agency approves the homes).

When can a sponsor include these new facilities on its claim to the State agency?

A sponsor can only include new facilities on its claim for reimbursement after the State agency approves the facility, and within the 60-90 day requirements for claim submission. In the example given above, the sponsoring organization could not include the four new homes on its October claim until after the State agency approved the four homes' participation on November 20. The same applies to the claim for administrative reimbursement for these homes. The amended claim could be submitted any time up to January 31.

For what period prior to State agency approval may a day care home receive retroactive reimbursement?

A day care home can receive retroactive reimbursement back to the first day of the month before the month in which its application is approved by the State agency, or the effective date of its license/alternate approval, whichever is later. In no case may a facility be reimbursed for meals served prior to the effective date of its license/alternate approval.

Which approach does USDA recommend that State agencies follow?

This memorandum does not intend to recommend or prohibit either approach; rather it explicitly permits the extension of retroactive payments to day care homes under certain circumstances, and establishes some parameters for a State agency to follow in implementing its policy on retroactive reimbursement. These parameters will ensure that the State agency's policy is in conformance with all Program requirements set forth in 7 CFR Part 226.

Do these same approaches apply to centers?

Yes. However, please note that the regulations do not explicitly require sponsors of centers to enter into agreements with their centers. If the State agency does not require these agreements, then this would not be a condition for sponsored centers to receive retroactive reimbursement.

Must a State agency adopt the same approach for its centers and day care homes?

No. It is permissible for State agencies to adopt one approach for retroactive reimbursement for its centers and another for its day care homes, as long as the policies

are consistently applied within each type of facility (i.e., one policy for all day care homes, and one policy for all centers).

How does FNS plan to monitor implementation of this guidance?

We plan to add to the Management Evaluation Guidance several questions concerning the State agency's facility approval process and its retroactive reimbursement policy to ensure that they are consistent with this memorandum

Please contact Melissa Rothstein or Ed Morawetz at 703-305-2620 if you have any questions regarding this memorandum.

A handwritten signature in purple ink, reading "Stanley C. Garnett". The signature is written in a cursive, flowing style.

STANLEY C. GARNETT
Director
Child Nutrition Division